



Developing and Negotiating International Agreements

Best Practices Handbook

**SAF/IAPQ
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Introduction

This handbook was prepared to document best practices for developing and negotiating international agreements. It provides sound advice on methods to minimize false starts, late in the game twists, and for negotiating projects with best value for the Department of Defense (DoD). Application of these best practices should minimize the overall agreement cycle time to respond to operational requirements or technological opportunities in a timely manner and foster trusting relationships with our allied partners.

This handbook has intentionally not been designed to be a definitive source of either procedures or policies, which are well documented in other materials, nor is it meant to be a checklist or cookbook. It contains effective practices to help make the inherently complex international agreement development process more predictable and less painful.

It contains information pertinent to international cooperation on complex acquisition programs pursued through program Memorandum of Agreements/Understanding (MOA/MOU) with much of the guidance also applicable to agreements, arrangements, or supplements to existing umbrella or framework agreements, Data or Information Exchange Annexes (DEA/IEA) to master agreements, as well as the loan of equipment for research and development purposes.

Getting the Effort Off to a Good Start

It is important to get an identified cooperation opportunity headed in an executable heading from day one. This is a critical phase, which if not managed correctly, can lead to false starts with attendant scrap, rework, and delays, frustration on the part of US and allied stakeholders, and a conclusion by all parties that international cooperation is just too hard to do. Below are a few key initial reviews that should be performed by the assigned SAF/IAPQ action officer, or at lower levels, with consultation with appropriate functional personnel at the earliest possible time.

- Can the effort be pursued within the statutory authorities for International Cooperative, Research, Development, and Acquisition (ICRD&A) for which SAF/IAPQ has responsibility for in accordance with AFI 51-701? Or on the other hand, should the effort be pursued through Foreign Military Sales (FMS) procedures or as an “operational” agreement?
- Is there an adequate management commitment to pursue the project to completion and make adequate resources available?
- Is there a reasonable basis for assuming that a financially equitable agreement can be developed in compliance with the DoD Financial Management Regulation (FMR)?

- Are there any showstopper technology transfer limitations?

If the answers to any of the above screening criteria are negative, the assigned SAF/IAPQ action officer should recommend to management that the effort either not be pursued or pursued through an international cooperation means not within SAF/IAPQ's charter. If the effort is not within SAF/IAPQ's charter, the action officer should assist the proponent by providing advice on alternate avenues they should pursue. It is important to make these determinations quickly to minimize resource expenditure on a dead end road. If further into the process of defining the international project, it appears that these threshold conditions are no longer being met; the action officer should develop a recommended position for management and promptly communicate the resulting position to program stakeholders.

Once the assigned action officer has determined that there is a potentially viable international cooperative project within SAF/IAPQ's area of responsibility, it is time to get to work on defining the international cooperative project in detail.

Defining the International Project

One of the first steps in defining international projects is typically to conduct technical discussions with the partner nation(s). The effectiveness of the technical discussions has a major impact not only on the ultimate value that the project provides to the DoD, but also on the speed which the project moves through the international agreement development and negotiation process.

Technical discussions by definition are not binding negotiation sessions but they can have a major impact on the trade space available during subsequent negotiations. This can be particularly true on smaller projects pursued under an umbrella agreement in the areas of the work distribution between the nations and the financial shares of the parties. Care needs to be taken to frame these discussions toward what is optimal for the DoD. Discussions on possible financial contributions of the nations, particularly on non-financial contributions, must be geared toward attributing value to these efforts in accordance with Financial Management Regulation (FMR) financial principles. Adequate information also needs to be collected during these technical discussions to firmly define the project and develop information required for the agreement documentation (i.e. Summary Statement of Intent (SSOI), Quid-Pro-Quo (QPQ) Analysis, Delegation of Disclosure Authority Letter (DDL), and the planned international agreement).

In the past, technical discussions for smaller efforts have been conducted by field personnel without SAF/IAPQ involvement. Under revised procedures, the assigned SAF/IAPQ action officer should seek to either influence or participate in these technical discussions, as appropriate, to begin building personal knowledge, an effective International Cooperative Agreement Team (ICAT), rapport with partner nation

personnel, and to help ensure their effectiveness. SAF/IAPQ action officer direct participation is a judgment call and should be based on the significance and complexity of the effort and organizational priorities.

US participants should obtain a firm understanding of the following during technical discussions:

- **Project Name, Scope and Objectives:** Agree on a project name and develop a concise statement of the project's scope and objectives.
- **Benefits to Both Parties:** What operational requirements will be met by the effort? Does the effort contribute to interoperability or other direct benefits to the warfighter – get specific! Do they have technology the US needs or is interested in?
- **Schedule Considerations:** When must the effort begin and/or be completed? Are there other key dates? Understand the linkages to other efforts and to national budget cycles.
- **Technological Contributions of Both Parties:** Understand the background technology both parties will need to bring to the table. Determine if equipment items will need to be loaned or services provided.
- **Specific Responsibilities of Each Party:** Identify specific tasks to be performed by each party individually and those performed jointly.
- **Equitability of Contributions:** Understand what each country would bring to the project (personnel, funding, test ranges, equipment, experience, prior research, services, and background information, etc) as their share or contribution. Develop some preliminary calculations on the value of the non-financial contributions --estimate in financial terms.
- **Determine Industrial Roles:** What companies would logically be involved in executing the project? What would be their specific tasks? How mature are the industrial discussions and what is the status of export licensing activities? Get the names and contact information for key industry personnel.
- **Management Structure:** Consider how the project might be structured, managed, and controlled. A single program manager or separate program managers, joint or separate project offices? Would a Steering Committee for executive oversight be beneficial?

How will conflicts or disagreements be resolved? Will the DoD and Partner Nation want to assign Cooperative Project Personnel (CPP) to each other's organizations to work on the Project? If so, when, how long, performing what tasks?

- **Contracting Considerations:** Will the United States be contracting on behalf of the partner nation or vice versa? What organization would be doing the contracting and are there existing contract vehicles? Would contracts logically be competitive or sole source?
- **Transfer of Funds:** Would fund transfers between the nations be required?
- **Assessment of Foreign Interest/Commitment:** What is their motivation to cooperate with us? Is there a strong commitment to proceed with the project? Do they have adequate financial resources?
- **Proponent's Points of Contact:** Ensure you have the name, title, office symbol, organization address, telephone and fax numbers, and e-mail address for each point of contact, alternate, and other key personnel from the partner nation(s).

US participants should document the results of the technical discussions. It is good practice to develop an agreed listing of specific action items, with assigned Offices of Primary Responsibility (OPRs) and due dates, prior to adjourning the session.

Based on the results of the technical discussions, the SAF/IAPQ action officer, in conjunction with the project stakeholders and their management, should make a conscious go/no-go decision as whether to proceed with this international cooperative opportunity.

Assuming a positive decision, the next step is to define the specific international agreement mechanism that will be used for the project if this has not been determined earlier. Should the effort be pursued as a Project Arrangement (PA)(or similar agreement) under an existing umbrella agreement? Should a stand-alone Program MOA/MOU be developed? Should the effort be pursued as a DEA/IEA under a master agreement? The SAF/IAPQ action officer should ensure that the correct form of international agreement, in consideration of the attendant legal authorities, is chosen. This is an important decision as errors can lead to time being wasted pursuing a non-executable path with attend scrap, rework, and delays. This is a good time to run the effort by general counsel (SAF/GCI--International Affairs) if there is any doubt on the appropriateness of the selected agreement type. Below are examples of a few pitfalls that should be avoided.

- Targeting an effort for a DEA/IEA where the contemplated effort cannot be accomplished within the associated legal authority or where the transfer of equipment, funds, or personnel is contemplated.
- Contemplating a Loan Agreement with a country not eligible for the requisite legal authority.
- Planning to pursue an effort as a PA under an umbrella MOA/MOU where the technical scope, or required legal authority for the effort, exceeds the authority of the umbrella agreement. Factors such as whether the umbrella agreement provides legal authority for transfer of funds and contracting on behalf of the other party or exchange of personnel need to be considered.
- Planning to pursue an effort through a PA where the duration of the work planned under the project exceeds the expiration date of the umbrella agreement, without having an executable strategy for resolving this disconnect.

The final step in this stage is to begin to identify the key issues which will likely be encountered and use this as an input to determining the membership of the **International Cooperative Agreement Team (ICAT)**.

Forming and Leading the Team

The assigned SAF/IAPQ action officer is solely responsible for forming the ICAT and leading its activities. ICATs should be formed at the earliest practical time but no later than after technical discussions have indicated there is a potentially viable cooperative project and there has been a management decision to proceed with the effort.

The action officer should select ICAT members based on knowledge of the stakeholders and interested organizations and an analysis of the significance, complexity, and key issues associated with the effort. The action officer may want to define a core ICAT group which participates in all aspects in developing the international cooperative project and an extended ICAT group which would only provide consultation on specific functional matters.

ICATs serve three basic purposes. First, they provide a mechanism for organizations at all levels, from field activities to the Office of Secretary Defense (OSD), to work together on the project from the beginning rather than tossing documentation up and down the chain of command with little or no direct interaction. Second, they allow all stakeholders to “touch”, buy-in, and assist in developing the international cooperative project rather than throwing stones at it later during the formal coordination process. Third, they assemble the expertise necessary to structure the effort, work management and policy issues, develop US positions, assist the SAF/IAPQ action officer in developing the international agreement documentation, and support subsequent negotiations.

Based on the analysis of the specific project, the action officer should evaluate the utility of having the following organizations involved in the ICAT structure:

- **Field:** Program Management, Engineering, Financial, Foreign Disclosure, International Offices, International Points of Contact, etc.
- **Headquarters USAF:** SAF/IAPD (Disclosure), SAF/GCI (General Counsel), SAF/IARW (Weapons), SAF/IAR (Regionals), SAF/FMBIS (Financial), SAF/AQ (Program Element Monitor), AF/XO (Requirements and/or Program Element Monitor), AF/XI (Integration), etc.
- **Office of the Secretary of Defense:** DUSD/AT&L(IC) (Desk Officer), OSD Functional offices
- **In-Country:** SAF/IA Liaison Officers, Offense of Defense Cooperation (ODC) or equivalent organization personnel, Defense Attaché Office personnel
- **Other Service Personnel**
- **US Industry**

The action officer should consider developing a written ICAT charter to establish its authority, define the ICAT's objectives, establish its membership, define the responsibilities of the participants, policies on information exchange, decision-making methods, etc. The action officer should also develop a roster of ICAT members with contact information and make this available to all team members. Below are some general guidelines for effective ICATs.

- As with all teams it is important to go through a team-building phase where the team members develop trust and confidence in each other. If the ICAT participants don't already know each other and have established productive working norms, the action officer should convene a kick-off meeting and employ some team building exercises prior to beginning detailed work on the project.
- After going through this team-building phase and initial meeting, the ICAT can probably effectively work the majority of the time by e-mail and telephone conferences. The action officer needs to establish a policy for open sharing information and should consider holding regularly scheduled group telephone conferences with established agendas.
- The action officer should ensure a list of action items is maintained, complete with OPR, due date, and status and make this information available to all ICAT members.
- The action officer should ensure all key issues are identified and establish a work plan and assign action items to ensure all issues are being worked.

- The ICAT should develop a schedule for developing and negotiating the international agreement and track progress against this schedule and avoid continual rebaselining. This schedule should address foreign disclosure concerns such as any required Exceptions to National Disclosure Policy (ENDP), development of the DDL, and the export license activities of US industry participants, if known and applicable. It is important to involve foreign disclosure offices in the process from the beginning.
- With regard to US industry participation, the ICAT needs to determine the appropriateness of including company representatives based on knowledge of competitive interests and determine if there is a need to hold certain information as government only.

The ICAT leader needs to employ outstanding interpersonal skills in working within and leading teams and must be knowledgeable of team decision-making tools. The Memory Jogger and The Team Memory Jogger by GOAL/QPC and Joiner Associates Inc provide a wealth of concise information on building and leading effective teams and on conflict resolution and are recommended as a desktop reference.

The ICAT Leader should periodically give the team a health check by evaluating the following and taking corrective action as necessary:

- Do we have the right membership?
- Is there a mechanism to share and pool information?
- How well do we use the information we have?
- How effectively are we managing information?
- How is our team cohesion?
- Can we adopt and then stick to a plan?

Now that the ICAT team has been formed and protocols established, the next step is to develop the documentation required to obtain authority to develop and or obtain authority to sign the international agreement.

Preparing the Agreement Documentation

The SAF/IAPQ ICAT Leader is responsible for ensuring the development of quality agreement documentation in a timely manner including the SSOI, QPQ Analysis, the international agreement, the DDL, etc. It is beyond the scope of this handbook to

discuss the details of the individual documents but there are a few best practices, which should be mentioned.

The SSOI or QPQ

The SAF/IAPQ ICAT Leader “owns” these two documents and must ensure that every section is complete, logical, thorough - but concise, and written at a language level suitable for personnel who must review and approve them. The ICAT Leader must literally understand every word in the document to ensure an optimal project is being pursued and to expedite staffing through the review process. Special care should be given to the financial section to insure proper evaluation of non-financial contributions, that the planned agreement meets the FMR criteria for equitability, and that the action officer can respond to questions in this area. The documentation should be free from typographical, grammar, or arithmetic errors.

The International Agreement

It is common practice to develop one international agreement based on editing a recent similar international agreement. This is an acceptable laborsaving practice assuming it is coupled with a review of the product against the approved International Agreement Generator (IAG) language. This review serves to ensure that the latest approved language is included in the draft agreement and provides the action officer an opportunity to assess section-by-section if the proposed language is appropriate for the specific project. It also provides the action officer an opportunity to do a refresher on the linkages between the various sections of the agreement. When editing a previous agreement for a new effort, care needs to be taken to ensure the correct form of agreement is used (Chapeau or Non-Chapeau). The agreement is a legal document and must be “letter perfect” including spacing.

Foreign Disclosure

The ICAT Leader must ensure that plans for the staffing of any required ENDPs are consistent with the overall schedule and that development of the DDL is initiated at the field level at a time in sync with the other documentation and that it is consistent with the SSOI and the international agreement.

The ICAT Leader should ensure that before the draft international agreement is tabled to the partner nation that it reflects no more than the intended **initial** negotiating positions as discussed later in this handbook.

Negotiation Basics

The section provides basic information on the negotiating process, types of negotiations, effective skills, and negotiating tactics. Credit is given to C. K. Gunsalus, who has been assisting SAF/IAPQ in developing negotiation skills, for much of this information.

What is Negotiation?

Negotiation is a process conducted through conversation, affected by personalities, a learned skill, and driven by information values. It is conducted by two or more parties on a voluntary basis frequently involving conflict, with the parties having a preference for resolution where they expect give and take. It involves the management of givens and intangibles.

Types of Negotiation

Negotiation can take several forms. Distributive negotiations involve a single dimension, frequently money, with a win-lose outcome. Integrative negotiations involve multidimensional negotiations characterized by the possibility of a win-win outcome. Congruent negotiations are where both parties desire the same outcome but don't realize it. International agreement negotiations are likely to fall in either the congruent or integrative categories so these types of negotiation will be discussed further.

- **Congruent Negotiations:** The international agreement negotiator often may encounter a congruent situation when negotiating a PA under the terms of an umbrella or master MOA/MOU as these agreements have resolved the frequently challenging policy issues. This would be the expected case when there were effective technical discussions. The task here is to table the agreement and resolve any small concerns often without the negotiators having to meet face-to-face.
- **Integrative Negotiations:** Integrative negotiations are frequently conducted in the context of a long-term relationship such as we have with our allied partners. We typically encounter integrative negotiations when developing a program or umbrella MOA/MOU. This type of negotiation involves multiple issues ranging from general policy matters to the details of the specific project with the parties having different valuations on the issues or the same valuations but with different preferences. As a result, there are tradeoffs possible with win-win solutions available. The important tactics to use in integrative negotiations are to build rapport and trust, ask questions, share information, make and request proposals, and brainstorm solutions to difficult problems. Identifying the different valuations on the various issues are the key to successful integrative negotiations.

Negotiation Vocabulary

There are a few key terms which should become part of the international agreement negotiator's vocabulary and which will be used in the following discussions.

- **BATNA** – Best Alternative to No Agreement
- **ZOPA** – Zone of Possible Agreement
- **Reservation Point** -- “Worst” offer you can accept without walking

Stages of Negotiation

All negotiations go through the process listed below. A discussion of relevant tasks and techniques associated with each phase follows.

- **Preparing to Negotiate**
- **Preliminary Stage (opening, rapport, tone)**
- **Information Stage (value creation)**
- **Competitive Stage (claiming value)**
- **Closing Stage (value solidifying)**
- **Cooperative Integrative Stage (value maximizing)**

Preparing to Negotiate

The preparation phase is key to the success of the negotiations. The negotiator must identify the key interests and issues, explore alternatives, and develop goals and reservation points for each issue considering policy limitations with knowledge of the BATNA. The negotiator should establish ambitious (but realistic) negotiating goals and develop principled supporting rationale for the goals. The negotiator must research the interests of the other party, be knowledgeable of their BATNA, and attempt to determine the ZOPA for each issue. The negotiator must also define their negotiating team during the preparation phase.

Defining the Negotiating Team

The negotiator must determine the membership of the negotiating team ensuring adequate professional knowledge is resident within the team but with a preference for small rather than large teams. The negotiator should assign roles to team members making certain to designate a note taker to keep track of issues, the other party's rationale, concessions, and agreements. The negotiator should determine the make-up of the other party's negotiating team and attempt to obtain a biography/resume for the other party's lead negotiator to assist in developing rapport. The negotiator must ensure that the team is prepared to communicate with a single voice and ensure protocols are established for communicating within the negotiating sessions or calling for off-line caucuses or breaks.

Preliminary stage (opening, rapport, tone)

The negotiator should attempt to develop rapport with his counterpart and between the two teams and should consider having an icebreaker social event before beginning the negotiation session. At a minimum, the lead negotiator should try to have some private time with his counterpart before beginning negotiations to get to know each other. The negotiator should ensure that negotiations proceed with a collegial, professional tone, trying to promote a team attitude between the parties. The seating arrangement can be an important factor in developing teamwork and rapport. It may make sense for the lead negotiators to sit next to each other rather than on opposing sides of the table.

Information Stage (value creation)

In this stage you begin to understand the other party's issues and concerns. Communication, particularly **listening** skills, are critical to determining the other sides concerns, needs, and preferences. Use the active and passive listening techniques below. Demonstrate understanding by acknowledging points and feelings, repeating back or paraphrasing concerns and seeking clarification.

Listening and Persuasion Skills

Use passive and active listening skills and facilitating responses. Use questions like, "tell me more about that, what do you mean by that, can you put that in other words," to elicit facts. Use questions like, "how do you feel about that, what do you mean by that, can you be more specific, how so, and in what way?" to elicit information on feelings. Echo phrases and rephrase and repeat the other party's concerns. Make people feel listened to, as they will be more receptive to your positions. Apply effective persuasion and influencing tactics. Listen, listen, listen; search for interests versus positions; and depersonalize problems.

Non-Verbal Communication

Pay attention to your and the other party's non-verbal communications, as they provide unintended leaks on feelings and attitudes toward statements and positions. Get a baseline on the other party's non-verbal communication and watch for changes in pattern. Assign a team member to watch the other team to pick up unintended, leaked information. Use your own non-verbal communication strategically, including mirroring the other person, to help alleviate stress. Use effective interpersonal interactions and layer your professional skills over personal reactions.

Competitive Stage (claiming value)

This is the stage where offers are made and solicited. Concessions are requested with both sides attempting to maximize value. The negotiator must exercise care in making initial offers, understand their own negotiating style and strengths, understand the negotiating ploys which the other side may use, and know techniques to get past stalemates. A key point is to frame the negotiation around issues beneficial to your interests. It is also important for both sides to begin saying "yes", so it is often a good tactic to take on the easier issues first.

First Offer Issues

You almost always want to make the first offer, particularly if you have adequate information, as it anchors the negotiation range with the initial offer highly correlating with the final outcome. The disadvantages of making the initial offer are that it gives up much information, you may anchor the negotiations in too low of a range, and you may kill the deal if the offer is substantially lower in value than the other party's expectations

and needs. If you make an extreme offer, it should be done with flexibility and humor. If you don't have enough information to make a first offer, solicit one from the other side.

Negotiating Ploys

You should recognize ploys used by the other party to understand what you are hearing. Some common negotiating ploys are listed below.

Extreme Demands	Slow Concessions	Commitment Tactics
Limited Authority	Nibble Technique	Aggressive Behavior
Walking Out	Appeal to Guilt	Reverse Psychology
Diversionsary Demands	Belly Up	Take It or Leave It

Getting Past Stalemates

It is likely that you will hit negotiating stalemates therefore it is important to have some tools to jog negotiations forward. You may need to reframe the negotiations and use an integrated approach. Reframing the negotiations may involve adding issues to diffuse conflict, probing deeper into the interests of the other party, developing creative options, and using accepted standards to depersonalize the discussions. Use the journalist's questions to reframe the issue and get past the obstacle.

- Who (else does it that way)?
- What (if)?
- When (could you provide that information)?
- Where (is the authority for that)?
- What (makes that fair)?
- Why (why not)?
- How (would that work)?

You may need to use an advanced integrative bargaining approach, unbundling the issues to understand them, and adding issues to change the frame, make contingency offers (I will agree to this if you agree to that) or make multiple simultaneous offers involving multiple issues.

Some general guidelines for the competitive stage are listed below.

- Be vigilant regarding anchors and framing.
- Counteroffer immediately.
- Back up your positions with solid rationale.
- Pay attention to concession patterns.

- Practice agreeing: collect “yeses”, agree wherever you can, agree without conceding, acknowledge their competence and authority, don’t say but - say “yes and ...”
- Avoid egocentrism bias.
- Avoid sinister attribution errors (in absence of a relation people will come up with sinister reasons).
- Use reciprocity norms – its your turn.
- Self-interest is a given -- so expect it -- not get upset by it.
- Reputations are fragile.
- Use silence strategically - make an offer and then be silent – the next person who speaks often loses.
- Ask “Do you think that is a reasonable offer?”
- Strengthen rapport if things get difficult - “I see you are upset...I see that you re feeling uncomfortable...is this as frustrating for you as it is for me...lets take a break.”
- When faced with stalemates consider necking down the negotiations to a closed door session between lead negotiators.
- If all else fails, you might pose hypothetical solutions to difficult issues and see if the other side is willing to accept them with a specified silence procedure (parties agree if no notice is given within a certain time limit).
- When a negotiation session is not going well, know when to call it off – it may be less damaging to stop than to continue if negotiations are polarized and overly stressed.

Closing Stage (value solidifying)

In the closing stage you clean up the fringes of the negotiated issues, documenting the agreements in the appropriate written form. It is important to reach full closure on all items, if possible, to avoid the need to revisit the matters.

Cooperative Integrative Stage (value maximizing)

At the end of negotiations, “Ask if there is something I can do to make the deal better for you.” This final stage is important particularly when the parties have a continuing important relationship.

Do a Post Mortem

Effective negotiation is a learned skill and it is important to do a post mortem after each negotiation session. The negotiator and team should analyze what they did well and identify areas for future improvement.

The Silver Bullets

The key elements to successful negotiations are preparation, communication, and knowing (and controlling) yourself. Understand your style – play to your strengths, know and use influencing tactics, track non-verbal communication, understand and track the stages of negotiation, make principled high offers, probe for valuation differences, handle difficult situations, and assess and leverage sources of power.

Preparing for Negotiations

It is now time for detailed preparation for the main event. The negotiator must identify the key issues, develop negotiating positions and rationale for the positions, make predictions of the other party's goals for each issue, developing an idea if there is a ZOPA for each issue, and develop strategies for reaching agreement on the tough issues. The lead negotiator must also determine the makeup of the team, based on an analysis of the issues, and determine what information they need to have ready access to during the negotiation session.

The negotiator should complete a worksheet similar to the following to identify and prepare for discussions on the major issues and maintain strict control of this document.

Issue	Initial Offer	Goal	Reservation Point	Other Party's Goal (Predicted)
Issue A				
Issue B				
Issue C				

Identifying the Issues

The negotiator needs to understand two basic types of issues: the issues specific to the international project, and general policy issues that the other nation frequently raises with the DoD during international agreement negotiations. The project issues typically are in the areas of cost share, work share, and technology transfer, with the major issues generally becoming visible during technical discussions or other interaction. The ICAT, in-country personnel, and US industry representatives are often good sources for identifying the project issues. The policy issues are typically in the areas of third-party transfers, intellectual property rights, concerns about the US export control system or

other matters which are addressed in our IAG language. Good sources to point out likely issues in this area are personnel from other recent DoD negotiating teams, the Embassy country team, SAF/GCI, and OSD offices.

Developing Offers, Goals, Reservation Points and Rationale

The negotiator needs to develop initial offers, negotiating goals, and reservation points for each of the issues. For project related issues the negotiator may have significant constraints in the areas of cost share (financial equitability), US industry desires for significant “noble” work, and in technology transfer. These constraints need to be reflected in the goals and reservation points. For policy-related issues the negotiator is frequently constrained by either US law or firm DoD policy. For both types of issues, the negotiator must develop firm rationale for the positions -- both in “selling” these positions during negotiation and in developing internal US Government support for the negotiated outcome. The negotiator should seek SAF/IAPQ management approval of their goals, reservation points, and strategies to identify tough issues prior to beginning negotiation.

Predicting the Other Party's Goals

The negotiator should attempt to predict the other party's goals to determine if there is a probable ZOPA. Good sources for information in this area were mentioned above. For policy related issues the negotiator should contact other recent DoD negotiators to understand what policy issues they faced and how they were resolved.

Identifying the ZOPA

For each issue the negotiator needs to identify if there is a probable ZOPA. The negotiator should pay special attention to issues where the ZOPA is either small or not apparent, and develop a strategy for overcoming the differences.

First Offer Issues

The initial offer in international agreement negotiations is frequently made by tabling a draft agreement. The negotiator should follow the general guidance on when to make the initial offer and avoid the pitfalls of anchoring the negotiations in too low a range. In no case should the tabled international agreement contain terms and conditions beyond the intended initial offer. On some matters it is frequently better to leave the tabled agreement terms as TBD to avoid passing too much information on the US position and anchoring the negotiations in the wrong range, or to prevent overreaction to what they perceive as an insincere offer.

Selecting the Team and Establishing the Rules of Engagement (ROE)

The negotiator should select the team based on an analysis of the issues ensuring the right team makeup to make maximum progress. If there are probable extensive policy

issues, which would likely be the case if you were negotiating one of the first international agreements between the DoD and a partner nation, General Counsel direct participation is probably mandatory. The negotiator must also ensure the team has a firm understanding of the ROEs on lead negotiator authority, speaking protocols, roles, and communications during the sessions.

Country Considerations

The negotiator should understand the other party's acquisition process, who the key decision makers are on the cooperative project, their financial and policy constraints, and the authority of the lead negotiator. The team should brush up on cultural considerations and learn about the country's governmental system, economic conditions, major social issues, etc. The CIA Factbook and Department of State Country Notes are good sources of information.

Knowing What Documents to Take with You

When negotiating MOA/MOUs with likely policy issues, the negotiator must have support material available during negotiations to assist them in both in conveying the rationale for the US positions or seeking "language" solutions to the issues. The IAG is a good source of rationale for frequently encountered policy matters. Recently concluded DoD international agreements with the partner nation are a good source of what language compromises have been acceptable to the parties in the past. The other party's lead negotiator will likely know this information. The negotiator should take this documentation (on a laptop) to the negotiating session.

Language and Cultural Considerations

Language and cultural considerations can have a major impact on how smoothly negotiations proceed. Language considerations are easy to see, while cultural impacts can be less apparent.

Language Considerations

Depending on the nations and people involved, the negotiations will either be conducted totally in English, conducted with simultaneous translation, or with the use of translators only when the parties are having difficulty communicating in English. Unless you are negotiating with either native or fully fluent English speakers, the negotiator must watch both their conversation pace and word choice to ensure understanding. In cases where translations are likely required, the US team should provide their own qualified translator rather than depend on the other party. Having a translator on your team can also help pick up some of the other party's native language consultation. If extensive translation is expected, the planned time for the negotiation session should be expanded accordingly.

Cultural Considerations

The key is to prepare properly and to be open to cultural differences and find a way to turn them to an advantage or at least don't let them derail you. In integrative negotiations cultural differences may actually provide additional opportunities for agreements as the parties may value issues differently. It is important to show respect for the other party's culture and avoid the tendency toward overaggressive "American" behavior.

Overcoming Cultural Barriers

The negotiators should develop a basic understanding of the other party's cultural norms, particularly when dealing with non-western societies. Knowing a few polite sayings in the other language might also be a great idea but be sure that this will not offend the foreign delegation. Negotiators must avoid stereotypes, bias, attribution errors, taking cultural differences personally, or becoming impatient with the other party. Successful strategies include having an awareness of your own biases and stereotypes, maintaining flexibility and patience, using a professional approach, doing your homework, maintaining a sense of humor, being tolerant of differences, keeping an open mind, and maintaining a non-judgmental attitude. Don't take differences personally and don't make judgments that may be rooted in culture.

Impact of Cultural Differences

Culture differences may effect protocols, verbal and non-verbal communication, tolerance for disagreement and confrontation, the importance of showing respect, how rapport is built, the importance of "face", how concessions are made, timing, authority of the negotiator, norms on gift exchange, and the importance of social events.

BOTTOM LINE--Anticipate the sources of misunderstanding, build personal bridges, study the culture, avoid attribution errors, and find ways to show respect (research the culture, learn a few phrases).

Conducting the Negotiations

It is now time to conduct the negotiations using effective rapport building, negotiations skills, and your preparation. Negotiations will take their own course but there are a few surrounding matters that should be considered.

- **The first point:** Don't conduct the negotiation session unless you are satisfied that you are prepared and have the right team membership. If these conditions are not met it is much better to reschedule negotiations than to get them off to a bad start.

- If the negotiations are being held in the other country, particularly on major efforts with wide interest, you should offer to in-brief and out-brief the Embassy country team.
- Maximize the productivity of the negotiation sessions. On issues which you are not certain how to handle or are uncertain of your flexibility, contact experts by phone, fax, or e-mail to obtain guidance rather than automatically taking home the issue.
- You should ensure you have assigned a note taker and maintain a record of the discussions including the other party's positions, rationale, and concessions as well as what your side said. It is also important to have a clear record of what was agreed to and what remains open.
- View the social events as an important tool in developing rapport and encourage participation by your team.
- Maintain control of your negotiating team – make certain the right people are speaking at the right times. Know when to cut off unproductive conversation.
- If the session does not result in total agreement, you should discuss plans for the next steps and attempt to get mutual agreement on the way ahead. Attempt to agree on a specific date for concluding the agreement and develop work plans to meet that goal. Develop plans for continuing to work on the issues between negotiating sessions.
- Always conduct a wrap-up session to ensure mutual understanding of any remaining issues and work plans. Develop an action item list for items the party's have agreed to work.
- If the other side hosted the negotiations, follow-up with a personal thank you letter.

Communication Channels

The negotiator should recognize that on major international cooperative projects there are a variety of communications channels that will be used to influence the negotiations. There will be discussions on the project at senior DoD/Ministry levels during regularly scheduled meetings. US industry will lobby for their interests with senior DoD officials. The US intelligence apparatus will be providing reports through established channels to senior DoD leadership. The negotiator needs to learn how to use these channels by keeping key staff offices advised on the issues so our senior officials can support what the negotiation team is trying to accomplish at the table.

Signing & Implementing the International Agreement

Once you have reached agreement on the terms of the international agreement it is important to develop a mutual understanding of how the agreement will be signed. You also must ensure internal US actions are taken to implement the agreement.

Signing the International Agreement

Both sides will likely need to ratify the tentative agreement reached at the negotiation table through subsequent internal coordination. It is important for both sides to have transparency into these processes and their expected duration. It is also important to discuss who will be the signatories of the agreement to ensure it is signed by personnel of comparable rank and authority. On major agreements it may be appropriate to have a signing ceremony or have the agreement signed in conjunction with an already scheduled event and use it as a deliverable. It is also important for both sides to agree on a public affairs plan for announcing consummation of the international project.

Implementing the International Agreement

There are internal US processes that are triggered by the signature of the agreement. Copies of the agreement need to be filed with legal repositories as defined by regulations. More importantly, the agreement must be implemented to the field level with delegated disclosure authority. Implementing industrial arrangements may need to progress through the export control system. The ICAT leader's work is not done until these activities are completed.

10 Most Important Points

- Determine if there is a potentially viable international cooperative project, within SAF/IAPQ's area of responsibility, at the very beginning.
- Ensure effective technical discussions are conducted and the correct agreement type and legal authority is selected.
- Form the ICAT, with appropriate membership, as soon as possible and lead it using team decision-making tools to resolve the issues you identify.
- Understand foreign disclosure and export licensing processes and integrate them with the agreement development and program schedules.
- Take control of the international agreement documentation and ensure quality products are created in a timely manner.
- Know the negotiation process and practice your skills – its learned .

- Prepare for negotiation - know your BATNA, key issues, reference points, ZOPA, and develop negotiation goals.
- Understand the culture of the other party and its influence on the negotiation process.
- Build rapport with the other party and conduct negotiations layering professional skills over personal behavior.
- Keep at it after the agreement is concluded to transition the effort to the implementation stage.